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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 214.

HENRY A. UTERHART AND EMIL HEUEL, AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF CONRAD STEIN, DECEASED, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 30, 1914.

(24,326)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 30, 1915.

1 1. *Petition and Exhibits. Filed December 6, 1911.*

In the Court of Claims.

No. 31272.

HENRY A. UTERHART and EMIL HEUEL, as Trustees under the Last Will and Testament of Conrad Stein, Deceased,

vs.

UNITED STATES.

Petition.

Filed December 6, 1911.

To the Honorable the Chief Justice and the Judges of the Court of Claims:

Your petitioners, Emil Heuel and Henry A. Uterhart, as trustees under the last will and testament of Conrad Stein, deceased, respectfully represent.

I.

That on June 13, 1898, the President of the United States approved an act, entitled, "An Act to provide ways and means to meet war expenditures, and for other purposes," (30 Stat., 448) by section 29 of which legacies and distributive shares arising from personal property became subject to a tax. The portions of said section 29, material to this case, are as follows:

"SEC. 29. That any person or persons having in charge or trust as administrators, executors or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of
2 ten thousand dollars in actual value, passing, after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein transferred by deed, grant, bargain, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be and hereby are, made subject to a duty or tax, to be paid to the United States as follows—that is to say:

"Where the whole amount of said personal property shall exceed in value ten thousand and shall not exceed in value the sum of twenty-five thousand dollars the tax shall be:

"First. Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother, or sister to the person who died possessed of such property, as

aforesaid, at the rate of seventy-five cents for each and every hundred dollars of the clear value of such interest in such property.

* * * * * * *

"and where the amount or value of said property shall exceed the sum of one hundred thousand dollars, but shall not exceed the sum of five hundred thousand dollars, such rates of duty shall be multiplied by two."

II.

That on March 2, 1901, the President of the United States approved an amendment (31 Stat., 918) to section 30 of the said War Revenue Act of June 13, 1898, the portion of said amendment now material to this case being as follows:

"Any tax paid under the provisions of sections twenty-nine and thirty shall be deducted from the particular legacy or distributive share on account of which the same is charged."

3

III.

That on April 12, 1902 the President of the United States approved an act (32 Stat., 97) repealing section 29 of said act of June 13, 1898, said repeal being made, by the terms of said repealing act, to take effect on July 1, 1902.

IV.

That on June 27, 1902 the President of the United States approved an act entitled, "An Act to provide for refunding taxes paid upon legacies and bequests for uses of a religious, charitable, or educational character, for the encouragement of art, and so forth, under the Act of June thirteenth, eighteen hundred and ninety-eight, and for other purposes," (32 Stat., 406) of which section 3 is material in this case and reads as follows:

"That in all cases where an executor, administrator, or trustee shall have paid, or shall hereafter pay, any tax upon any legacy or distributive share of personal property under the provisions of the act approved June thirteenth, eighteen hundred and ninety-eight, entitled 'An Act to provide ways and means to meet war expenditures, and for other purposes,' and amendments thereof, the Secretary of the Treasury be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, upon proper application being made to the Commissioner of Internal Revenue, under such rules and regulations as may be prescribed, so much of said tax as may have been collected on contingent beneficial interests which shall not have become vested prior to July first, nineteen hundred and two. And no tax shall hereafter be assessed or imposed under said Act approved June thirteenth, eighteen hundred and ninety-eight, upon or in respect of any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to said July first, nineteen hundred and two."

4

V.

That on April 6, 1900, Conrad Stein, a citizen of the United States and of the State of New York, and a resident of the city of New York in said State, departed this life, leaving a valid last will and testament which said last will and testament was thereafter, to wit, on May 3, 1900, duly admitted to probate and record by a court of competent jurisdiction in the city and county of New York, in the State of New York, and letters testamentary were by order of said court duly issued to Josephine Stein, Alexander Stein and Emil Heuel, who were therein named as executrix and executors and trustees, they having accepted said trust, and acted, and are acting, except as hereinafter, in paragraph VI, particularly stated, as executrix, executors and trustees as aforesaid. A certified copy of said letters testamentary is herewith filed, marked "Petitioners' Exhibit A," and prayed to be read and considered as a part of this petition.

VI.

That thereafter, to wit, on April 18, 1905, the said executors and executrix having duly administered the personal estate of the said decedent and having theretofore been duly discharged as such executors and executrix, the said Alexander Stein and Josephine Stein, who until said last-named date had acted as trustee under said will resigned their said trust and that by order of the Surrogate's Court in and for the County of New York, in the State of New York, duly entered on July 10, 1905, Henry A. Uterhart, one of your petitioners, was substituted as trustee in their place and stead. A duly certified copy of said order is herewith filed, marked "Petitioners' Exhibit B," and prayed to be read and considered as a part of this petition.

5

VII.

In and by his said last will and testament the said testator disposed of the residue of his estate by the seventh, eighth, ninth and tenth paragraphs thereof, which said paragraphs read as follows:

"Seventh: It is my wish that my minor children be supported and educated until they respectively attain the age of twenty-one years at the expense of my estate.

"Eighth: All the rest, residue and remainder of my property real and personal or mixed and wheresoever the same may be situated I give, devise and bequeath unto my children Charlotte Trubenbach, Wilhelmina Schneider, Elizabeth Heuel, Josephine Stein, Paula Stein, Ella Stein and Carl Stein, in equal shares and parts; to them and their heirs forever.

"Ninth: None of my residuary real estate shall be sold until my youngest child attains the age of twenty-one years nor shall my executors be compelled to account until my youngest child so comes of age, though they may make advances to children as in their judgment they may deem reasonable; and may divide any surplus rents among legatees as they may judge proper.

"Tenth: I nominate and appoint my wife Josephine Stein, my son Alexander Stein and my son-in-law Dr. Emil Heuel to be the executrix and executors of this my will with full power and authority to let and lease real estate; to make such repairs and improvements as in their judgment may be necessary and to sell and convey any and all real estate and give proper conveyances therefor. None of my executors shall be required to give security. Should my wife for any reason refuse to act as executrix or at any time resign as such executrix it is my wish and I hereby authorize and direct her to appoint under hand and seal some discreet person as executor of this my will in her place and stead and the person so appointed
6 by her shall have all the rights and powers as executor of this my will as if originally appointed by me."

All of which will more fully and at length appear upon reference to a certified copy of said will, herewith filed, marked "Petitioners' Exhibit C," which it is prayed may be read and considered as a part of this petition.

VIII.

That soon after the decease of said testator and after the admission to probate of said will and the granting of said letters testamentary, the said Emil Heuel, one of your petitioners, instituted suit at a special term of the Supreme Court of the State of New York, held at Part IV, at the county court-house, in the borough of Manhattan, naming the said Josephine Stein and Alexander Stein, executrix and executor and trustees, and the said children of the said testator named in the said eighth paragraph of the said will as parties defendant, for the purpose of obtaining a construction of said will, and that thereafter, to wit, on January 16, 1902, a decree was entered by said court construing said will, which said decree, so far as material to this case, reads as follows:

"And it is ordered, adjudged and decreed: That the provisions of the will relating to the residuary estate are valid and should be maintained, enforced and carried out by the executors and trustees of the last will and testament of Conrad Stein, deceased.

"It is further ordered, adjudged and decreed: That the only conditions expressed in the fourth and fifth articles of the will to be performed by the said Alexander Stein and Conrad Stein, Jr., are valid and operative conditions.

"It is further ordered, adjudged and decreed: That it was the intention of the said Conrad Stein, and such is the true meaning and construction of his will, that the whole of his residuary estate, real and personal, should, so far as necessary, be applied to the
7 support and education of his minor children Josephine Stein, Paula Stein, Ella Stein and Carl Stein during the minorities if Carl Stein survive such period. To that end he gave, devised and bequeathed to Emil Heuel and Alexander Stein, his executors and trustees, and to Josephine Stein, his executrix and trustee, all his residuary estate both real and personal, upon trust to receive the rents, issues and profits and income thereof until his son Carl Stein attains the age of twenty-one years, and to apply the same to the sup-

port and education of the testator's said minor children, Josephine Stein, Paula Stein, Ella Stein and Carl Stein, until they respectively attain the age of twenty-one years, if Carl Stein survive such period, and on Carl Stein attaining the age of twenty-one years, or sooner dying, the said testator gave, devised and bequeathed the said residuary estate, both real and personal to his children, Charlotte Truebenbach, Wilhelmina Schneider, Elizabeth Henel, Josephine Stein Paula Stein, Ella Stein and Carl Stein in equal shares and parts.

"The said executors and executrix and trustees are empowered by the said will to let and lease the said residuary real estate and to make such repairs and improvements upon said residuary real estate as in their judgment may be necessary. After the payment of taxes and other expenses of the administration of the estate, they are to apply so much of the rents of the real estate, and of the income of the personal estate, as shall be reasonable and proper, to the support and education of the testator's said minor children during their respective minorities as aforesaid. The rents of the real estate are to be applied first to the uses aforesaid, and after making such application the said executors and executrix and trustees are, from time to time, whenever they shall judge proper, to divide any surplus rents among the testator's said children, Charlotte Truebenbach, Wilhelmina Schneider, Elizabeth Henel, Josephine Stein, Paula Stein, Ella Stein, and Carl Stein, in equal proportions, the shares of any minor child to be paid to the guardian of that child's estate.

8 "The said executors and executrix and trustees are further empowered from time to time during the minority of the said minor children to pay over by way of advance to the said Charlotte, Wilhelmina, Elizabeth, Josephine, Paula, Ella and Carl, in equal amounts or shares, so much of the capital of the testator's residuary personal estate, or the income thereof as in their judgment they may deem reasonable so to pay over, the shares going to any minor children to be paid to the guardian of that child's estate.

"It is Further Ordered, Adjudged and Decreed: That the said executors and executrix are authorized and empowered, after Carl Stein shall have attained the age of twenty-one years, to sell and convey from time to time all or any part of the testator's residuary real estate.

"And it is Further Adjudged and Decreed: That the said executors and executrix and trustees shall not be compelled to make distribution of the principal of the estate or any part thereof, except in the exercise of their reasonable discretion until the said Carl Stein attains the age of twenty-one years."

A certified copy of the whole of said decree is filed herewith, marked "Petitioners' Exhibit D," and is prayed to be read and considered as a part of this petition.

The said suit was in no sense a friendly action, but, on the contrary, was strongly contested as to every point by one or more of the parties in interest; it was not brought or conducted with regard, in any respect, to its effect upon the taxability under the War Revenue Act of June 13, 1898 of any legacies or interests and, in fact, this litigation and its results was much more costly to the estate and to all of those beneficially entitled under the will than it would have been to have

paid double the amount which the collector, as will hereinafter appear, claimed and collected under color of that taxing statute.

9

IX.

The decree quoted in paragraph VIII was and is a final decree, and was and is conclusive of the rights of all parties in interest under the said will of the said Conrad Stein and upon the said executrix, executors and trustees, including your petitioners. The personalty of the said testator passed under the will, as interpreted and declared by the said decree and not otherwise and the said executrix and executors and trustees and each and every one of them, while acting as such, acted under and complied strictly with the terms and directions contained in said will as so interpreted by the said decree and acted under said decree and in strict compliance therewith. Your petitioners are still trustees as aforesaid and their authority under the will and decree has never been revoked or modified.

X.

All of the said children of the said testator named in the eighth paragraph of the said will and in the said decree were living on July 1, 1902; the said Carl Stein, the youngest child of the said testator was born on November 15, 1891, he had not attained the age of twenty-one years on July 1, 1902, and the trust created by the said will and declared by the said decree did not terminate in whole or in part on or before the said July 1, 1902.

XI.

Under the discretionary authority reposed in them by the said will and the said decree your petitioners and their predecessors, as trustees and otherwise, paid to and for the account of the said children of the said testator, out of the trust fund, between the death
10 of the said testator and July 1, 1902 the sum of $49,674.55 and no more, as follows, that is to say:

To Mrs. Josephine Stein, as guardian of Josephine Stein, Paula Stein, Ella Stein and Carl Stein	$29,674.55
To Charlotte Truebenbach	5,000.00
To Josephine Stein	5,000.00
To Elizabeth Heuel	5,000.00
To Wilhelmina Schneider	5,000.00
Total	$49,674.55

XII.

After the death of the said testator and during the year 1902 the Collector of Internal Revenue for the Third District of New York, claimed, demanded and collected, and your petitioners to him paid, the sum of Twenty Thousand, Four Hundred and Forty-Eight and 94/100 dollars ($20,448.94), alleged by said Collector to be due and

payable, in accordance with said legacy tax law of June 13, 1898 and amendments, on account of legacies arising from personal property bequeathed by the said testator by his said will. The said sum of Twenty Thousand, Four Hundred and Forty-Eight and 94/100 dollars ($20,448.94) was the aggregate of nine separate sums each claimed to be due upon or in respect to a separate legacy, and individual seven separate sums each claimed, collected and paid upon or in respect to a separate legacy to one of the seven children of the said testator named in the eighth paragraph of his said will and in the said decree. The alleged clear value of each of the said seven separate legacies, the rate of taxation applied, and the sum so claimed, collected and paid thereon were as follows:

11

Legacy to:	Alleged clear value.	Rate of taxation per $100.00.	Amount of tax.
Charlotte Truebenbach...	$163,151.42	$1.50	$2,447.26
Elizabeth Heuel.....	163,151.42	1.50	2,447.26
Josephine Stein.....	163,151.42	1.50	2,447.26
Paula Stein.....	163,151.42	1.50	2,447.26
Ella Stein.....	163,151.42	1.50	2,447.26
Wilhelmina Schneider....	163,151.42	1.50	2,447.26
Carl Stein.....	163,151.42	1.50	2,447.26
Total.....			$17,130.82

The whole of said sum of Twenty Thousand, Four Hundred and Forty-Eight and 94/100 dollars ($20,448.94) so claimed, collected and paid, including said Seventeen Thousand, One Hundred and Thirty and 82/100 dollars ($17,130.82) was duly turned over and delivered to the United States by said Collector in the usual and ordinary course of the conduct of his business as Collector.

XIII.

Thereafter, to wit, on or about March 5, 1909, Henry A. Uterhart, one of your petitioners, duly filed with the Commissioner of Internal Revenue, an application prepared in accordance with the rules and regulations therefor prescribed, asking and demanding the refundment to them, under the provisions of the said third section of the Act of June 27, 1902 and out of the appropriation therein provided, of said sum of Twenty Thousand, Four Hundred and Forty-Eight and 94/100 dollars ($20,448.94) paid as taxes as aforesaid, or of such part of said sum as was paid as taxes upon or in respect to contingent beneficial interests which did not become absolutely vested in possession or enjoyment prior to July 1, 1902. The said application was accompanied by each and all of the papers and documents therein referred to and by all necessary evidence and proof
12 of facts. Said application was in all respects in accordance with the requirements of said Section 3 of the act of June 27, 1902 and the rules and regulations thereunder prescribed. The facts alleged in said application were not traversed or denied by the

Secretary of the Treasury, or by any representative of the United States. Although said application was in all respects complete and in due form, nevertheless, on July 13, 1911 the Secretary of the Treasury rejected and denied said application, and he has continuously declined and still declines and refuses to pay to your petitioners the moneys asked and demanded in their application as aforesaid. The reasons and grounds for such refusal and rejection are recited in a letter of recommendation addressed to the Secretary of the Treasury by the Commissioner of Internal Revenue and bearing date as of July 13, 1911, and approved by the Secretary of the Treasury, a copy of which is filed herewith, marked "Petitioners' Exhibit E," and prayed to be read and considered as a part of this petition. Said reasons and grounds, as will more fully and at length appear by reference to said Exhibit E, are shown by the following extracts therefrom:

"The tax as collected was upon these interests of the children, vested absolutely in possession, and none of the tax collected was upon interests which under the terms of the will are contingent as to possession. Moreover, under the terms of the will none of the enjoyment of the shares given to the children absolutely is withheld from them, except as regards the weekly payment to the widow and such portions of income as the trustees may deem unnecessary or inadvisable for the support of the children who were minors.

"The Supreme Court of the State of New York afterwards construed this will, and the claim is based upon the contention that under this construction no interest was vested in the children of testator who were beneficiaries in the residuary estate except the income actually paid to them prior to July 1, 1902.

* * * * * * *

13 "In this case the claimant contends that this office is bound by the decision of a State court—not the highest tribunal of the State—construing not a State statute or a State constitution—but construing out of existence a subject of Federal taxation, fixed in a will, and upon which tax had been imposed by act of Congress prior to the constructive decree, and, in fact, on the day of the testator's death. If the construction of a will by a State court is to determine a basis of taxation, the State is given power to define or destroy objects of Federal taxation and to prevent entirely that uniformity of taxation specifically required by the Constitution of the United States."

XIV.

Petitioners are advised by counsel and therefore aver that the third section of the Act of Congress, approved on June 27, 1902, hereinbefore set forth, directs the Secretary of the Treasury to refund so much of all sums paid as taxes claimed under sections 29 and 30 of the Act of June 13, 1898 upon or in respect to any contingent beneficial interest which did not become absolutely vested in possession or enjoyment prior to July 1, 1902, the day on which the taxing law ceased to be in force; that the taxes imposed by Section 29 of the Act of June 13, 1898, were imposed upon the passing of personal prop-

rty into absolute possession or enjoyment, by will or under the intes-
ate laws and not upon such personal property as such, and that the
nal decree of the Supreme Court of New York construing the said
ill was and is a binding construction thereof which fixed and deter-
ined the manner in which the residuary personal estate of the said
estator should pass under said will as effectively as though the said
ill had been expressed in the precise terms of the decree and that
ere was no authority conferred upon the Secretary of the Treasury
by the Act of June 13, 1898 and amendments, or by the Act
of June 27, 1902 or otherwise reposed in the Secretary of the
Treasury to construe the will or to assess or collect or to re se
refund any tax as though the will had been different in any re-
ect from the construction fixed by said final decree; that the
oneys paid by your petitioners as taxes upon or in respect to the in-
rests of the children of the said testator, named in the eighth para-
aph of his will, were collected upon or in respect of contingent
neficial interests which had not become absolutely vested in the
ssession or enjoyment of these legatees or any of them prior to
ly 1, 1902; that as there was not paid to or for any or either of
d legatees named in the eighth paragraph of said will prior to July
1902 any sum in excess of ten thousand dollars, your petitioners
now entitled to have refunded to them, as trustees as aforesaid,
whole of said sum of Seventeen Thousand, One Hundred and
irty and 82/100 dollars ($17,130.82), the said aggregate of the
ns separately claimed and collected and the whole sum actually
d upon or in respect of the interests of said legatees so named in
eighth paragraph of the will.

Your petitioners are further advised by counsel and therefore aver
t the balance of said sum of Twenty Thousand, Four Hundred
Forty-Eight and 94/100 dollars ($20,448.94) claimed, collected,
paid, as hereinbefore fully set forth, in excess of said sum of
enteen Thousand, One Hundred and Thirty and 82/100 dollars
7,130.82) was lawfully collected in respect of legacies provided in
will of said testator to legatees not named in the said eighth
agraph of the will and that this balance, amounting to Three
usand, Three Hundred and Eighteen and 12/100 dollars
,318.12) is all which the United States is entitled to retain out of
sum of Twenty Thousand, Four Hundred and Forty-Eight and
100 ($20,448.94), and that the refusal of the Secretary of the
asury to refund the sum of Seventeen Thousand, One Hundred
Thirty and 82/100 dollars ($17,130.82) is contrary to the terms
directions contained in said third section of the Act of June 27,
2.

XV.

Therefore your petitioners aver that there is justly owing to them,
rustees of the estate of the late Conrad Stein, from the United
s, on account of the matters herein set forth, the sum of Seven-
Thousand, One Hundred and Thirty and 82/100 dollars
,130.82), after deducting all just set-offs and demands on the
of the United States, and they further aver, that the said estate

of the said Conrad Stein, represented by petitioners, is the sole owner of the claim herein sued upon, and that no transfer or assignment of said claim or any part thereof or interest therein has ever been made; that the petitioners, claimants herein, are citizens of the United States and have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted or given encouragement to a rebellion against the United States, and that they believe the averments in this petition to be true.

The premises considered, petitioners pray:

Prayers.

1. That this honorable court will render judgment against the United States for the said sum of Seventeen Thousand, One Hundred and Thirty and 82/100 dollars ($17,130.82) in favor of these petitioners as trustees under the will of Conrad Stein, as aforesaid.

2. That petitioners may have such other and further relief as the nature of the case may require and to the court may seem meet and proper.

HENRY A. UTERHART.
EMIL HEUEL.

NEWCOMB, CHURCHILL & FREY,
Attorneys for Petitioners.

16 STATE OF NEW YORK,
County of New York, ss:

I do solemnly swear that I am one of the petitioners in and have subscribed the annexed petition, being one of the trustees of the estate of the late Conrad Stein therein referred to; that the facts stated in said petition as of personal knowledge are true, and that those stated therein upon information and belief I believe to be true.

HENRY A. UTERHART.
EMIL HEUEL.

Subscribed and sworn to before me this 4th day of November, A. D. 1911.

[NOTARIAL SEAL.] FRED W. MULLER,
Notary Public, New York County. #135, #3124.

STATE OF NEW YORK,
County of New York, ss:

I do solemnly swear that I am one of the petitioners in and have subscribed the annexed petition, being one of the trustees of the estate of the late Conrad Stein therein referred to; that the facts stated in said petition as of personal knowledge are true, and that those stated therein upon information and belief I believe to be true.

EMIL HEUEL.

Sworn to and subscribed before me this 10th day of October, A. D. 1911.

[NOTARIAL SEAL.] FRED W. MULLER,
Notary Public, New York County, #135, #3124.

17 PETITIONERS' EXHIBITS A AND C.

In the name of God: Amen.

I, Conrad Stein, of the City, County and State of New York, do hereby make, publish and declare this to be my last Will and Testament in manner following, that is to say:

First: I direct that all my just debts and funeral expenses be paid.

Second: I nominate and appoint my beloved wife, Josephine Stein, to be the guardian of the persons and estate of my minor children until they attain the age of twenty-one years; and I request that no security for the performance of her duties as such Guardian be required.

Third: I give and bequeath unto my said wife all the household property and furniture, beds and bedding, of whatsoever name, nature and kind, useful as well as ornamental, all pictures and statuary, bronzes, silver and plated ware, bric-a-brac; the safe and all its contents whether cash, notes or other securities, and all other property which may be in the house and premises Number 327 West Fifty-Seventh Street in the City of New York, at the time of my death; to have and to hold the same to her own use and benefit, forever.

Fourth: I give, devise and bequeath unto my sons Alexander Stein and Conrad Stein Jr., my brewery, ice house and malt house, with all the machinery and other property and appurtenances therein and thereto belonging, situate on West 57th Street in the City of New York, together with the lots upon which the same are erected fronting upon West 57th Street and extending to West 56th Street: Also the lots and buildings on West 57th Street upon which the Stables of the Brewery business are erected; and also the lots and premises on West 58th Street now used for bottling purposes;

18 together with the horses, harness, waggons and other articles and utensils used in said business; Also all moneys on deposit at the time of my decease in the "Germania Bank" and in the "West Side Bank" in the City of New York; together with all moneys, bills, notes, chattel mortgages, claims, accounts and outstandings due me and belonging or appertaining to said business; and the good will thereof; Upon condition however that my said sons shall pay and discharge all debts, contracts and obligations of said business, Brewery and malthouse, due or to grow due; and upon condition that they pay to my said wife Twenty dollars per week during her life, payable weekly. And I request that they continue, carry on and conduct said business upon the same line and in the same manner in which I have heretofore conducted the same.

Fifth: I give and bequeath unto my beloved wife my two carriage horses, together with the carriages, harnesses and other articles thereto belonging; also the use of the stables and carriage house, rent free, so long as she may desire.

Sixth: Having purchased the house No. 327 West 57th Street, New York City, for my wife, and having in furtherance of my intentions conveyed same to her for her sole use and benefit, forever, I

make no other special provision for her, being aware that she is entitled under the laws to her rights of dower in all my property.

Seventh: It is my wish that my minor children be supported and educated until they respectively attain the age of twenty-one years, at the expense of my estate.

Eighth: All the rest residue and remainder of my property real and personal or mixed, and wheresoever the same may be situated, I give, devise and bequeath unto my children Charlotte Truenbach, Wilhelmina Schneider, Elizabeth Heuel, Josephine Stein, Paula Stein, Ella Stein and Carl Stein, in equal shares and parts: to them and their heirs forever.

Ninth: None of my residuary real estate shall be sold
19 until my youngest child attains the age of twenty-one years; nor shall my Executors be compelled to account until my youngest child comes of age, though they may make advances to children as in their judgment they may deem reasonable: and may divide any surplus rents among legatees as they may judge proper.

Tenth: I nominate and appoint my wife Josephine Stein my son Alexander Stein, my son-in-law, Dr. Emil Heuel, to be the Executrix and Executors of this my will: with full power and authority to let and lease real estate: to make such repairs and improvements as in their judgment may be necessary, and to sell and convey any and all real estate and give proper conveyances therefor.

None of my executors shall be required to give security. Should my wife for any reason refuse to act as Executrix, or at any time resign as such Executrix, it is my wish and I hereby authorize and direct her to appoint under her hand and Seal some discreet person as Executor of this my will in her place and stead: and the person so appointed by her shall have all the rights and powers as Executor of this my Will as if originally named and appointed by me.

Eleventh: I hereby revoke all former and other Wills by me made.

In witness Whereof I have hereunto subscribed my name, and affixed my Seal this twentieth day of October in the year of our Lord one thousand eight hundred and ninety-eight.

CONRAD STEIN. [L. S.]

In the presence of
MICHAEL C. GROSS
JACOB ELTZ
GEORGE B. CHRISTMAN JR.

The foregoing instrument was on the date of the date thereof signed, sealed, published, and declared by Conrad Stein, the
20 testator therein named, as and for his Last Will and Testament in presence of us, who, at his request, and in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

MICHAEL C. GROSS
No. 248 West 52d street, New York City.
JACOB ELTZ.
122 W. *90th street, New York City.*
GEORGE B. CHRISTMAN JR.,
331 *East 55th street, New York City.*

The People of the State of New York, by the grace of God free and independent, to all to whom these presents shall come or whom they may concern, send greeting:

Know ye, That at the county of New York, on the 3rd day of May in the year of our Lord one thousand nine hundred, before Hon. Frank T. Fitzgerald, a surrogate of our said county, the last will and testament of Conrad Stein, deceased, was proved, and is now approved and allowed by us; and the said deceased having been at the time of his death a resident of the county of New York, by means whereof the proving and registering said will and the granting administration of all and singular the goods, chattels and credits of the said testator and also the auditing, allowing and final discharging the account thereof, doth belong unto us, the administration of all and singular goods, chattels and credits of the said deceased in any way concerning his will, is granted unto Josephine Stein, Alexander Stein, Emil Heuel, each of the County and State of New York, the executors in the said will named, they being first duly sworn, well, faithfully and honestly to discharge the duties of such executors.

In testimony whereof, we have caused the seal of office of the Surrogate's Court of the County of New York to be hereunto affixed.

21 Witness, Hon. Frank T. Fitzgerald, a surrogate of our said county of New York, at said county, the 4th day of May in the year of our Lord one thousand nine hundred.

J. FAIRFAX McLAUGHLIN,
Clerk of the Surrogate's Court.

STATE OF NEW YORK,
County of New York, ss:

I, Daniel J. Dowdney, Clerk of the Surrogate's Court of said County, do hereby certify that I have compared the foregoing copy of the last Will and Testament (together with the Letters Testamentary) of Conrad Stein, deceased, admitted to probate May 3d, 1900, and recorded in Liber 642 of wills, page 114, with the original record thereof now remaining in this office, and have found the same to be a correct transcript therefrom and of the whole of such original record.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Surrogates' Court of the County of New York, this 16th day of November in the year of our Lord one thousand nine hundred and eleven.

[SEAL.] DANIEL J. DOWDNEY,
Clerk of the Surrogates' Court.

22 PETITIONERS' EXHIBIT B.

At Chambers of the Surrogate's Court, Held in and for the County of New York, at the County Court House in said County, on the 10th Day of July, 1905.

Present: Frank T. Fitzgerald, Surrogate.

In the Matter of the Judicial Settlement of the Account and Supplemental Account of Josephine Stein, Alexander Stein, and Emil Heuel, as Trustees under the Last Will and Testament of Conrad Stein, Deceased.

On reading the petition of Josephine Stein, Alexander Stein and Emil Heuel as Trustees under the last Will and Testament of Conrad Stein, late of the county of New York, deceased duly filed in the office of the Clerk of this court on April 18, 1905, whereby application was made to the Surrogate of the County of New York for a judicial settlement of their account as such trustees, and on reading the petition and resignation of Alexander Stein, one of said trustees, from his office as such trustee, which was duly filed in said Clerk's office on April 18, 1905;

And on further reading the petition and resignation of Josephine Stein, one of the said trustees, from her office as such trustee and the designation and appointment by her of Henry A. Uterhart, Esq., counselor at law of the County of New York, as a trustee under the will of said Conrad Stein, deceased, in her place and stead pursuant to the power and authority vested in her in and by the terms of said will, which petition and resignation, designation and appointment were duly filed in the office of the Clerk of this court on April 18, 1905;

And on further reading the petition of said Alexander Stein, Josephine Stein and Emil Heuel as such trustees under the last will and testament of said deceased, duly filed in the office of the Clerk of this court on June 19, 1905, in which they made application to said Surrogate for a judicial settlement of their supplemental account as such trustee;

23 And a citation having been thereupon duly issued out of and under the seal of this court, pursuant to statute, directed to all persons interested in the estate of said deceased citing and requiring them and each of them personally to be and appear before the Surrogate at his office in the County of New York on the 27th day of June, 1905 at 10.30 o'clock in the forenoon of that day, then and there to show cause why the prayers of said petitions for the judicial settlement of the account and supplemental account of said trustees should not be granted, and why the resignations of said Alexander Stein and Josephine Stein as such trustees should not be accepted, and why Henry A. Uterhart, Esquire, should not be appointed as trustee under the will of said deceased in place and stead of the said Josephine Stein, resigned; and the said citation having been returned

with proof of due service thereof on all of the parties named therein, including Theodore L. Herrmann, Esquire, who was duly designated by orders of this court dated April 18, 1905, and June 19, 1905, to receive service of said citation on behalf of Carl Stein, an infant party under the age of fourteen years.

And the said Trustee, Emil Heuel, having appeared on the return of said citation by Messrs. Hatch, Keener & Clute, his attorneys, and the said Trustees, Alexander Stein and Josephine Stein, having appeared by their attorneys, Messrs. Myers & Goldsmith, and Josephine Uterhart, Paula Wright, Charlotte Trubenbach and Josephine Stein individually and as general guardian of Ella Stein and Carl Stein, infants, having appeared by Messrs. Uterhart & Graham, their attorneys;

And the said Trustees having duly rendered and filed their account and supplemental account under oath before the said Surrogate together with the vouchers in support thereof, and no objection having been filed thereto by any party to the proceeding, and the court having duly appointed Theodore L. Herrman, Esquire, as Special
24 Guardian to protect the interests of said Ella Stein and Carl Stein, infant parties, and said Special Guardian having duly filed his report in which he recommends that said account and supplemental account be judicially settled and allowed, and that the aforesaid resignations of Alexander Stein and Josephine Stein be accepted, and that the said Henry A. Uterhart, Esq., be appointed as Trustee in the place and stead of said Josephine Stein, resigned;

And the said Surrogate having examined the said account and supplemental account, and the vouchers accompanying the same, now here finds the state and condition of said account and supplemental account to be as stated and set forth in the following summary thereof, made by the said surrogate as judicially settled and adjusted by him to be recorded with and taken to be a part of the decree in this matter, to wit:

A Summary Statement of the Account and Supplemental Account of Josephine Stein, Alexander Stein, and Emil Heuel, as Trustees under the Last Will and Testament of Conrad Stein, Deceased, Made by the Surrogate as Judicially Settled and Allowed.

The said Trustees are charged as follows:

Schedule A/1, original account....	$1,277,083.48
Schedule A/2, original account....	81,592.20
Schedule A/2, supplemental account.	27,042.44
Schedule A/3, original account....	2,786.14
Schedule A/3, supplemental account.	4,189.08
Schedule A/4, original account....	2,530.87
Schedule A/4, supplemental account.	471.34
Schedule A/5, original account....	25,723.38
	$1,421,418.93

The said Trustees are charged as follows:

Schedule B 1, original account....	$1,298.75	
Schedule C, original account.....	48,938.73	
Schedule C, supplemental account...	7,997.23	
Schedule E, original account.....	1,292,060.37	
		$1,350,295.08
Leaving a cash balance in the hands of said Trustees..		$71,123.85

25 And it appearing that the said Trustees have fully accounted for all the moneys and property of the estate of said deceased which ever came into their hands as such trustees down to the date of said account and supplemental account and the said account and supplemental account having been adjusted by the said Surrogate and a summary statement of the same having been made as above and herewith recorded it is hereby

Ordered, adjudged and decreed that the said account and supplemental account be and the same are hereby judicially settled and allowed as filed and adjusted; and it is further

Ordered, adjudged and decreed: that out of the balance so found as above remaining in the hands of the said trustees, they each retain the sum of thirteen thousand six hundred and ninety-two and 95/100 dollars ($13,692.95) for the commissions to which they are entitled on this accounting. And it is further

Ordered, adjudged and decreed That the prayer of the said Alexander Stein be and the same hereby is granted and the Letters Testamentary heretofore issued to the said Alexander Stein on the 3rd day of May, 1900 be and they hereby are revoked, and the said Alexander Stein is hereby discharged from the office of Executor and Trustee under the last Will and Testament of Conrad Stein, deceased, and from all further duties, responsibilities and liabilities thereunder. And it is further

Ordered, adjudged and decreed That the prayer of the said Josephine Stein be and the same hereby is granted and the Letters Testamentary heretofore issued to the said Josephine Stein on the 3d day of May, 1900, be and they hereby are revoked, and the said Josephine Stein is hereby discharged from the office of Executrix and Trustee under the last Will and Testament of Conrad Stein, deceased, and from all further duties, responsibilities and liabilities thereunder. And it is further

Ordered, adjudged and decreed That Henry A. Uterhart,
26 Esq., counselor at law of the City of New York be and he hereby is appointed and designated as Trustee under the last Will and Testament of Conrad Stein, deceased, in the place and stead of said Josephine Stein, pursuant to the power in said Josephine Stein as exhibited in said last will and testament to designate and appoint her successor and the exercise by her of said power in the designating and appointing of the said Henry A. Uterhart, Esq., as trustee. And it is further

Ordered, adjudged and decreed That there be paid to Theodore L.

Herrman, Esq., as Special Guardian for the infants Ella Stein and Carl Stein, for his costs in this proceeding the sum of twenty-five dollars, which shall be paid out of the balance in their hands.

FRANK T. FITZGERALD, *Surrogate.*

Original filed July 10, 1905.
A true copy:
DANIEL J. DOWDNEY,
[SEAL.] *Clerk of the Surrogate's Court.*

PETITIONERS' EXHIBIT D.

The People of the State of New York, by the Grace of God Free and Independent, to all to whom these presents shall come or may concern, Greeting:

Know ye, That we having examined the records and files in the office of the Clerk of the County of New York and Clerk of the Supreme Court of said State for said County, do find a certain Judgment there remaining, in the words and figures following, to wit:
Filed Jan. 16, 1907.
[SEAL.]

27 At a Special Term of the Supreme Court, Held at Part IV Thereof, at the County Court House, in the Borough of Manhattan, City of New York, on the 16th Day of January, 1902.

Present: Hon. Henry Bischoff, Jr., Justice.

EMIL HEUEL, as Executor of the Last Will and Testament of Conrad Stein, Deceased, Plaintiff,
against
ALEXANDER STEIN, as Executor, and JOSEPHINE STEIN, as Executrix of the Last Will and Testament of Conrad Stein, Deceased; Alexander Stein and Emily, His Wife; Josephine Stein, Conrad Stein, Charlotte Truebenbach, Wilhelmina Schneider, and Rudolph Schneider, Her Husband; Elizabeth Heuel, and Emil Heuel, Her Husband; Josephine Stein, the Younger; Paula Stein, Ella Stein, and Carl Stein, Defendants.

Judgment.

This action having been brought for a judicial construction of the Last Will and Testament of Conrad Stein, deceased, and the plaintiff having appeared by Zabriskie, Burrill & Murray, his attorneys, the defendants, Josephine Stein, as executrix, and Alexander Stein as executor of the Last Will and Testament, having appeared and answered by Michael C. Gross, Esq., their attorney, and the defendant Josephine Stein individually and as Guardian of the person and

estates of the infants Josephine Stein, the younger, Paula Stein, Ella Stein and Carl Stein, having appeared and answered by A. G. Cropsey, Esq., her attorney, and the defendant Elizabeth Heuel having appeared and answered by Samuel C. Herriman, Esq., her attorney, and the defendants, Alexander Stein, individually, and Conrad Stein, having appeared and answered by Goldsmith and
28 Bronner, their attorneys, and the infant defendants Josephine Stein, the younger, Paula Stein, Ella Stein and Carl Stein, having appeared and answered by Emanuel J. Myers, their guardian ad litem, and the defendants Wilhelmina Schneider, Rudolph Schneider, Charlotte Truebenbach and Emil Heuel individually having made default in pleading and in appearing, and more than twenty days having elapsed since the service of the amended summons and complaint upon them severally and individually and no demurrer, answer or notice of appearance having been made and served in behalf of the defendants last named, and the issues raised by the complaint and the answer of the defendants who have appeared by their attorneys as aforesaid having been placed upon the calendar of this Court for the trial thereof, and having come on to be heard at a Special Term of this Court at the new County Court House in the Borough of Manhattan, City of New York, on the 16th day of February, 1901, by the Honorable Henry Bischoff, Jr., Justice without a jury, and the cause having been tried by the Court upon the pleadings and proofs of the respective parties in support of their several and respective allegations, and due deliberation having been thereupon had, and the court having made and filed its decision in writing construing the Last Will and Testament of the said Conrad Stein, deceased, and determining the rights of the several parties under the said Last Will and Testament, and in and to the estate of the said Conrad Stein, deceased, the testator.

Now on motion of Zabriskie, Burrill & Murray, attorneys for the plaintiff, it is

Ordered, adjudged and decreed: That the construction of that portion of the Last Will and Testament of the said Conrad Stein, deceased, relating to the testamentary provisions in behalf of Josephine Stein, the widow of the said Conrad Stein, deceased, in addition to the widow's dower in the real estate whereof the testator died seized, is that Josephine Stein, the widow of the said Conrad Stein,
29 testator, is entitled to dower in and to the real estate whereof the said Conrad Stein died seized, in addition to the pecuniary provisions contained in the said Last Will and Testament of the said Conrad Stein, deceased, in her behalf made.

And it is adjudged and decreed: That the right of the said Josephine Stein to dower in the real estate included in the devise to the said Alexander Stein and Conrad Stein is not inconsistent with and repugnant to the terms of the said Last Will and Testament of the said Conrad Stein.

And it is further adjudged and decreed: That the construction of that portion of the Last Will and Testament of Conrad Stein, deceased, contained in the Fourth and Fifth paragraphs or subdivisions of the said Last Will and Testament relating to the devise and be-

quest to Alexander Stein and Conrad Stein, Jr., is that Conrad Stein, the testator, devised to the defendants Alexander Stein and Conrad Stein, Jr., and they are entitled to take and hold under and by virtue of said provision in the said last will and testament the following described premises:

All those certain lots, pieces or parcels of land with the buildings thereon erected, situate, lying and being in the City of New York, and bounded and described as follows:

Beginning at a point on the northerly line or side of West 56th Street, at a point distant 150 feet westerly from the corner formed by the intersection of the westerly line or side of Tenth Avenue and the northerly line or side of West 56th Street, and running thence westerly along the northerly line or side of West 56th Street, 256 feet, 5 inches; thence northerly on a line parallel or nearly so with Tenth Avenue, 100 feet, 5 inches; thence easterly on a line parallel or nearly so with 56th street, 56 feet, 5 inches; thence northerly on a line parallel or nearly so with Tenth Avenue, 100 feet, 5 inches to the southerly line or side of West 57th Street; thence easterly along the southerly line or side of West 57th Street, 200 feet to a point distant 150 feet westerly from the corner formed by the intersection of the westerly line or side of Tenth Avenue and the southerly line or side of West 57th Street; thence southerly on a line parallel or nearly so with Tenth Avenue, 200 feet, 10 inches to the northerly line or side of West 56th Street, at the point or place of beginning, be the said several dimensions more or less, being known as street numbers 509, 511, 513, 515, 517, 519, 521, 523, 525 and 527 West 56th Street, and numbers 514, 516, 518, 520, 522, 524, 526 and 528 West 57th Street.

Also all those certain lots, pieces or parcels of lands with the buildings thereon erected, situate, lying and being in the city of New York, bounded and described as follows:

Beginning at a point on the northerly line or side of 57th Street at a point distant 175 feet westerly from the corner formed by the intersection of the westerly line or side of Tenth Avenue with the northerly line or side of 57th Street; running thence westerly along the northerly line or side of West 57th Street, 50 feet, running thence northerly on a line parallel or nearly so with Tenth Avenue, 200 feet, 11 inches to the southerly line or side of West 58th Street, and thence easterly along the southerly side of West 58th Street, 124 feet, 10 inches to a point distant 100 feet westerly from the corner formed by the intersection of the southerly line or side of West 58th Street, and the westerly line or side of Tenth Avenue, running thence southerly on a line parallel or nearly so with Tenth Avenue, 39 feet, 9 inches; thence northwesterly, 76 feet 9 inches, to a point distant 177 feet, 4 inches northerly from the northerly line or side of West 57th Street, and thence southerly on a line parallel or nearly so with Tenth Avenue, 177 feet, 4 inches, to the northerly line or side of 57th Street, at the point or place of beginning, be the said several dimensions more or less, and being known by the street numbers 517 and 519 West 57th Street and said premises being known as street num-

bers 508, 510, 512, 514 and 516 West 58th Street in the City of New York.

31 And it is further ordered, adjudged and decreed: That the said Alexander Stein and Conrad Stein are entitled to take all the personal property mentioned in the Fourth clause of the said Last Will and Testament and to all the real estate heretofore specifically described and mentioned and included in the devise contained in said Fourth clause of said Last Will and Testament upon the performance of the conditions mentioned in said "Fourth" and "Fifth" clauses of said last will and testament of Conrad Stein, deceased.

And it is ordered, adjudged and decreed: That the provisions contained in the clauses or paragraphs of the said will, marked "Seventh," "Eighth," "Ninth," and "Tenth" are lawful and valid.

And it is ordered, adjudged and decreed: That the devise of the residuary real estate of Conrad Stein, deceased, is lawful and valid and subject to the dower of the defendant Josephine Stein, and remedies to enforce such dower.

And it is ordered, adjudged and decreed: That the provisions of the will relating to the residuary estate are valid and should be maintained, enforced and carried out by the executors and trustees of the last will and testament of Conrad Stein, deceased.

It is further ordered, adjudged and decreed: That the only conditions expressed in the Fourth and Fifth articles of the will to be performed by the said Alexander Stein and Conrad Stein, Jr., are valid and operative conditions.

It is further ordered, adjudged and decreed: That it was the intention of the said Conrad Stein, and such is the true meaning and construction of his will, that the whole of his residuary estate, real and personal, should, so far as necessary, be applied to the support and education of his minor children, Josephine Stein, Paula Stein, Ella Stein and Carl Stein during the minorities if Carl Stein survive such period. To that end he gave, devised and bequeathed to Emil Heuel and Alexander Stein his executors and trustees, and to

32 Josephine Stein, his executrix and trustee, all his residuary estate both real and personal, upon trust to receive the rents issues and profits and income thereof until his son Carl Stein attains the age of twenty-one years, and to apply the same to the support and education of the testator's said minor children, Josephine Stein, Paula Stein, Ella Stein and Carl Stein, until they respectively attain the age of twenty-one years, if Carl Stein survive such period, and on Carl Stein attaining the age of twenty-one years, or sooner dying, the said testator gave, devised and bequeathed the said residuary estate, both real and personal, to his children Charlotte Truebenbach, Wilhelmina Schneider, Elizabeth Heuel, Josephine Stein, Paula Stein, Ella Stein and Carl Stein in equal shares and parts.

The said executors and executrix and trustees are empowered by the said will to let and lease the said residuary real estate and to make such repairs and improvements upon said residuary real estate as in their judgment may be necessary. After the payment of taxes and other expenses of the administration of the estate, they are to apply

so much of the rents of the real estate, and of the income of the personal estate as shall be reasonable and proper, to the support and education of the testator's said minor children during their respective minorities as aforesaid. The rents of the real estate are to be applied first to the uses aforesaid, and after making such application the said executors and executrix and trustees are, from time to time, whenever they shall judge proper, to divide any surplus rents among the said testator's said children, Charlotte Truebenbach, Wilhelmina Schneider, Elizabeth Henel, Josephine Stein, Paula Stein, Ella Stein and Carl Stein in equal proportions, the shares of any minor child to be paid to the guardian of that child's estate.

The said executors and executrix and trustees are further empowered from time to time during the minority of the said minor children to pay over by way of advance to the said Charlotte, Wilhelmina, Elizabeth, Josephine, Paula, Ella and Carl, in equal
33 amounts or shares, so much of the capital of the testator's residuary personal estate, or the income thereof as in their judgment they may deem reasonable so to pay over, the shares going to any minor children to be paid to the guardian of that child's estate.

It is further ordered, adjudged and decreed: That the said executors and executrix are authorized and empowered, after Carl Stein shall have attained the age of twenty-one years, to sell and convey from time to time all or any part of the testator's residuary real estate.

And it is further adjudged and decreed: That the said executors and executrix and trustees shall not be compelled to make distribution of the principal of the estate or any part thereof, except in the exercise of their reasonable discretion, until the said Carl Stein attains the age of twenty-one years.

It is further ordered, adjudged and decreed: That any party to this action who has appeared herein may apply to the Court on the foot of this judgment for such further relief as may be requisite for the purpose of more effectually carrying it out, and this judgment is to take the place of the judgment heretofore entered herein on November 12, 1910, which is hereby vacated and set aside.

Enter.

H. B., JR., *J. S. C.*

THOS. L. HAMILTON, *Clerk.*

All which we have caused by these presents to be exemplified, and the Seal of our said Supreme Court to be hereunto affixed.

Witness, Hon. Charles L. Guy, a Justice of the Supreme Court for the County of New York, the eighteenth day of November, in the year of our Lord one thousand nine hundred and eleven, of our Independence the one hundred and thirty-sixth.

[SEAL.] WM. F. SCHNEIDER, *Clerk.*

34 Charles L. Guy, a Presiding Justice at a Special Term of the Supreme Court of the State of New York for the County of New York, do hereby certify that William F. Schneider, whose name is subscribed to the preceding exemplification, is the Clerk of

the said County of New York, and Clerk of said Supreme Court f
said County duly elected and sworn, and that full faith and cre
are due to his official acts. I further certify that the Seal affixed
the exemplification is the Seal of our said Supreme Court, and th
the attestation thereof is in due form.

Dated, New York, Nov. 18th, 1911.

CHARLES L. GUY,
Justice of the Supreme Court of the State of New York.

STATE OF NEW YORK,
County of New York, ss:

I, William F. Schneider, Clerk of the Supreme Court of said Sta
in and for the County of New York, do hereby certify that Ho
Charles L. Guy, whose name is subscribed to the preceding Certi
cate, is Presiding Justice at a Special Term of the Supreme Court
said State in and for the County of New York, duly elected an
sworn, and that the signature of said Justice to said Certificate
genuine.

In testimony whereof, I have hereunto set my hand and affixe
the Seal of the said Court, this 18th day of Nov., 1911.

[SEAL.] WM. F. SCHNEIDER, *Clerk.*

PETITIONERS' EXHIBIT E.

E. C. J.
H. M. G.

July 13, 1911.

The Honorable, the Secretary of the Treasury.

SIR: I have the honor to submit herewith for your consid
35 eration and action the claim of Henry A. Uterhart, of New
York, trustee under the will of Conrad Stein, deceased, fo
the refunding of $20,448.94, tax paid on legacies.

Conrad Stein deceased April 6, 1900, leaving a net personal estat
of $1,768,865.85. The will of testator, under which this property
vested on the date of his death, provided that certain personal effect
should go to the widow absolutely; that testator's interest in
brewery and certain moneys deposited in a bank should pass into th
absolute possession of two sons and into their absolute enjoyment, ex
cept that from the income of this property $20 a week should be paid
to the widow during her life. The will provided that "all the rest
residue and remainder of my property, real and personal, or mixed
and wheresoever the same may be situated, I give, devise and bequeath
unto my children in equal shares and parts, to them and their heirs
forever." Further provision was made that none of the real estate
thus disposed of should be sold until the youngest child should at-
tain the age of twenty-one years, and that no accounting should be
required of the executors until that time, but the minor children
are to be supported and educated at the expense of the estate and may
receive advances of principal and surplus rents at the discretion of
the executors.

The tax as collected was upon these interests of the children, vested absolutely in possession, and none of the tax collected was upon interests which under the terms of the will are contingent as to possession. Moreover, under the terms of the will none of the enjoyment of the shares given to the children absolutely is withheld from them, except as regards the weekly payment to the widow and such portions of income as the trustee may deem unnecessary or inadvisable for the support of the children who were minors.

The Supreme Court of the State of New York afterwards construed this will, and the claim is based upon the contention that under this construction no interest was vested in the children of testator
36 who were beneficiaries in the residuary estate except the income actually paid to them prior to July 1, 1902.

The United States Supreme Court, however, held in Stutsman County vs. Wallace (142 U. S., 306) as follows:

"It is well settled that upon the construction of the constitution and laws of the State this court, as a general rule, follows the decisions of her highest court, unless they conflict with or impair the efficacy of some provision of the Federal Constitution or of a Federal statute."

(See also Norton vs. Shelby County, 118 U. S., 439, and Gormly vs. Clark, 134 U. S., 348.)

In this case the claimant contends that this office is bound by the decision of a State court—not the highest tribunal of the State—construing not a State statute or a State constitution, but construing out of existence a subject of Federal taxation, fixed in a will, and upon which tax had been imposed by act of Congress prior to the constructive decree, and, in fact, on the day of the testator's death. If the construction of a will by a State court is to determine a basis of taxation, the State is given power to define or destroy objects of Federal taxation and to prevent entirely that uniformity of taxation specifically required by the Constitution of the United States.

Under the plain terms of the will, the validity of which was acknowledged by the State court in question, the tax as collected was legally due from this estate, and the claim is, therefore, recommended for rejection.

Respectfully,

(Signed) R. E. CABELL,
Commissioner.

Findings approved and claim rejected.

(Signed) FRANKLIN MacVEAGH, *Secretary.*

37 II. *Traverse. Filed June* 12, 1914.

In the Court of Claims of the United States, December Term, A. D. 1913.

No. 31272.

HENRY A. UTERHART and EMIL HUEL, Trustees, &c., of Conrad Stein, Deceased.
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

HUSTON THOMPSON,
Assistant Attorney General.
J. R. W.

III. *Submission of case.*

On June 12, 1914 this case was submitted, without argument, by Messrs. Newcomb & Frey, for the claimants, and by Mr. George M. Anderson, for defendants.

38 IV. *Findings of Fact and Conclusions of Law. Filed June* 17, 1914.

Court of Claims of the United States.

No. 31272.

HENRY A. UTERHART and EMIL HEUEL, as Trustees under the Last Will and Testament of Conrad Stein, Deceased,
v.
THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

Henry A. Uterhart and Emil Heuel are trustees under the last will and testament of the late Conrad Stein, deceased, a resident of the State of New York and a naturalized citizen of the United States, and are now acting as such trustees.

II.

On April 6, 1900, the said Conrad Stein died, leaving a last will and testament, which was duly admitted to probate and record on May 3, 1900, in the Surrogate's Court for the County of New York and the State of New York, and which said last will and testament named Alexander Stein and Emil Heuel executors and trustees and Josephine Stein executrix and trustee. The said Alexander Stein Emil Heuel, and Josephine Stein accepted the trust under the will, took the required oath and entered into a bond to the approval of the said court, conditioned upon the faithful performance of their duties as executors and executrix and acted as such executors, executrix, and trustees until July 10, 1905, when the said Alexander Stein and Josephine Stein resigned and were discharged by decree of the Surrogate's Court of the County of New York and the State of New York from the duties of executor and executrix and trustees. The petitioner, Henry A. Uterhart, was, by decree of the Surrogate's Court for the County of New York, on July 10, 1905, appointed trustee in the place and stead of the trustee who resigned.

39 III.

The last will and testament of Conrad Stein is as follows:

In the name of God: Amen.

I, Conrad Stein, of the City, County and State of New York, do hereby make, publish and declare this to be my last Will and Testament in manner following, that is to say:

First: I direct that all my just debts and funeral expenses be paid.

Second: I nominate and appoint my beloved wife, Josephine Stein, to be the Guardian of the persons and estate of my minor children until they attain the age of twenty-one years: and I request that no security for the performance of her duties as such Guardian be required.

Third: I give and bequeath unto my said wife all the household property and furniture, beds and bedding, of whatsoever name, nature and kind, useful as well as ornamental, all pictures and statuary, bronzes, silver and plated ware, bric-a-brac; the safe and all its contents whether cash, notes or other securities, and all other property which may be in the house and premises Number 327 West Fifty-Seventh Street in the City of New York, at the time of my death: to have and to hold the same to her own use and benefit, forever.

Fourth: I give, devise and bequeath unto my sons Alexander Stein and Conrad Stein, Jr., my brewery, ice house and malt house, with all the machinery and other property and appurtenances therein and thereto belonging, situate on West 57th Street in the City of New York, together with the lots upon which the same are erected fronting upon West 57th Street and extending to West 56th Street: Also the lots and buildings on West 57th Street upon which the Stables of the Brewery business are erected: and also the lots and premises on West 58th Street now used for bottling purposes: together with the horses, harness, waggons and other articles and uten-

sils used in said business: Also all moneys on deposit at the time of my decease in the "Germania Bank" and in the "West Side Bank" in the City of New York: together with all moneys, bills, notes, chattel mortgages, claims, accounts and outstandings due me and belonging or appertaining to said business: and the good will thereof: Upon condition however that my said sons shall pay and discharge all debts, contracts and obligations of said business, Brewery and Malthouse, due or to grow due: and upon condition that they pay to my said wife Twenty dollars per week during her life, payable weekly. And I request that they continue, carry on and conduct said business upon the same line and in the same manner in which I have heretofore conducted the same.

Fifth: I give and bequeath unto my beloved wife my two carriage horses, together with the carriages, harnesses and other articles thereto belonging: also the use of the stables and carriage house, rent free, so long as she may desire.

Sixth: Having purchased the house No. 327 West 57th Street, New York City, for my wife, and having in furtherance of my intentions conveyed same to her for her sole use and benefit, forever, I make no other special provision for her, being aware that she is entitled under the laws to her rights of dower in all my property.

40 Seventh: It is my wish that my minor children be supported and educated until they respectively attain the age of twenty-one years, at the expense of my estate.

Eighth: All the rest and residue and remainder of my property real and personal or mixed, and wheresoever the same may be situated, I give, devise and bequeath unto my children Charlotte Truenbach, Wilhelmina Schneider, Elizabeth Heuel, Josephine Stein, Paula Stein, Ella Stein and Carl Stein, in equal shares and parts: to them and their heirs forever.

Ninth: None of my residuary real estate shall be sold until my youngest child attains the age of twenty-one years: nor shall my Executors be compelled to account until my youngest child comes of age, though they may make advances to children as in their judgment they may deem reasonable: and may divide any surplus rents among legatees as they may judge proper.

Tenth: I nominate and appoint my wife Josephine Stein my son Alexander Stein, my son-in-law, Dr. Emil Heuel, to be the Executrix and Executors of this my will: with full power and authority to let and lease real estate: to make such repairs and improvements as in their judgment may be necessary, and to sell and convey any and all real estate and give proper conveyances therefor.

None of my executors shall be required to give security. Should my wife for any reason refuse to act as Executrix, or at any time resign as such Executrix, it is my wish and I hereby authorize and direct her to appoint under her hand and Seal some discreet person as Executor of this my will in her place and stead: and the person so appointed by her shall have all the rights and powers as Executor of this my Will as if originally named and appointed by me.

Eleventh: I hereby revoke all former and other Wills by me made.

In witness Whereof I have hereunto subscribed my name, and affixed my Seal this twentieth day of October in the year of our Lord one thousand eight hundred and ninety-eight.

IV.

Some time prior to January 16, 1902, the said Emil Heuel as one of the executors of the said last will and testament of Conrad Stein, deceased, brought suit in the Supreme Court of the City of New York against Alexander Stein as executor and Josephine Stein as executrix of the said last will and testament and others, being the widow and heirs of the said Conrad Stein, deceased, named in said will. Said suit, among other things, prayed for a construction of the said will; and thereafter on, to-wit, the 16th day of January 1902 the following decree and judgment, so far as the same is material to this case, was made and entered.

"This action having been brought for a judicial construction of the Last will and Testament of Conrad Stein, deceased, and the plaintiff having appeared by" his attorneys, and all the defend-
41 ants appearing except Wilhelmina Schneider, Rudolph Schneider, Charlotte Truebenbach and Emil Heuel, who made default in appearing, but upon whom service was regularly had, the court proceeded to decree as follows:

"That Josephine Stein, the widow of the said Conrad Stein, testator, is entitled to dower in and to the real estate whereof the said Conrad Stein died seized, in addition to the pecuniary provisions contained in the said Last Will and Testament of the said Conrad Stein, in her behalf made.

And it is adjudged and decreed: That the right of the said Josephine Stein to dower in the real estate included in the devise to the said Alexander Stein and Conrad Stein is not inconsistent with and repugnant to the terms of the said Last Will and Testament of the said Conrad Stein.

And it is further adjudged and decreed: That the construction of that portion of the Last Will and Testament of Conrad Stein, deceased, contained in the Fourth and Fifth paragraphs or subdivisions of the said Last Will and Testament relating to the devise and bequest to Alexander Stein and Conrad Stein, Jr., is that Conrad Stein, the testator, devised to the defendants Alexander Stein and Conrad Stein, Jr., and they are entitled to take and hold under and by virtue of said provision in the said last will and testament the following described premises:

* * * * * * *

And it is further ordered, adjudged and decreed: That the said Alexander Stein and Conrad Stein are entitled to take all the personal property mentioned in the Fourth clause of the said Last Will and Testament and to all the real estate heretofore specifically described and mentioned and included in the devise contained in said Fourth clause of said Last Will and Testament upon the performance of the

conditions mentioned in said "Fourth" and "Fifth" clauses of said last will and testament of Conrad Stein, deceased.

And it is ordered, adjudged and decreed: That the provisions contained in the clauses or paragraphs of the said will, marked "Seventh," "Eighth," "Ninth," and "Tenth" are lawful and valid.

And it is ordered, adjudged and decreed: That the devise of the residuary real estate of Conrad Stein, deceased, is lawful and valid and subject to the dower of the defendant Josephine Stein, and remedies to enforce such dower.

And it is ordered, adjudged and decreed: That the provisions of the will relating to the residuary estate are valid and should be maintained, enforced and carried out by the executors and trustees of the last will and testament of Conrad Stein, deceased.

It is further ordered, adjudged and decreed: That the only conditions expressed in the Fourth and Fifth articles of the will to be performed by the said Alexander Stein and Conrad Stein, Jr., are valid and operative conditions.

It is further ordered, adjudged and decreed: That it was the intention of the said Conrad Stein, and such is the true meaning and construction of his will, that the whole of his residuary estate, real and personal, should, so far as necessary, be applied to the support and education of his minor children, Josephine Stein, Paula Stein, Ella Stein and Carl Stein during the minorities if Carl Stein survive such period. To that end he gave, devised and bequeathed to Emil Heuel and Alexander Stein his executors and trustees and to Josephine Stein, his executrix and trustee, all his residuary estate both real and personal, upon trust to receive the rents issues and profits and income thereof until his son Carl Stein attains the age of twenty-one years, and to apply the same to the support and education of the testator's said minor children, Josephine Stein, Paula Stein, Ella Stein and Carl Stein, until they respectively attain the age of twenty-one years, if Carl Stein survive such period, and on Carl Stein attaining the age of twenty-one years, or sooner dying, the said testator gave, devised and bequeathed the said residuary estate, both real and personal, to his children Charlotte Truebenbach, Wilhelmina Schneider, Elizabeth Heuel, Josephine Stein, Paula Stein, Ella Stein and Carl Stein in equal shares and parts.

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The said executors and executrix and trustees are empowered by the said will to let and lease the said residuary real estate and to make such repairs and improvements upon said residuary real estate as in their judgment may be necessary. After the payment of taxes and other expenses of the administration of the estate, they are to apply so much of the rents of the real estate, and of the income of the personal estate as shall be reasonable and proper, to the support and education of the testator's said minor children during their respective minorities as aforesaid. The rents of the real estate are to be applied first to the uses aforesaid, and after making such application the said executors and executrix and trustees are, from time to time, whenever they shall judge proper, to divide any surplus rents among the said testator's said children, Charlotte Truebenbach, Wilhelmina Schneider, Elizabeth

Heuel, Josephine Stein, Paula Stein, Ella Stein and Carl Stein in equal proportions, the shares of any minor child to be paid to the guardian of that child's estate.

"The said executors and executrix and trustees are further empowered from time to time during the minority of the said minor children to pay over by way of advance to the said Charlotte, Wilhelmina, Elizabeth, Josephine, Paula, Ella and Carl, in equal amounts or shares, so much of the capital of the testator's residuary personal estate, or the income thereof as in their judgment they may deem reasonable so to pay over, the shares going to any minor children to be paid to the guardian of that child's estate.

It is further ordered, adjudged and decreed: That the said executors and executrix are authorized and empowered, after Carl Stein shall have attained the age of twenty-one years, to sell and convey from time to time all or any part of the testator's residuary real estate.

And it is further adjudged and decreed: That the said executors and executrix and trustees shall not be compelled to make distribution of the principal of the estate or any part thereof, except in the exercise of their reasonable discretion, until the said Carl Stein attains the age of twenty-one years.

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V.

The personalty of said testator passed under the said will, and the said executors and executrix and trustees, and each of them, while acting as such, proceeded under and complied strictly with the terms and directions contained in said will as interpreted and construed by the said decree of the said Supreme Court.

VI.

Charlotte Truchenbach, Wilhelmina Schneider, Elizabeth Heuel, Josephine Stein, Paula Stein, Ella Stein, and Carl Stein were living on July 1, 1902. The said Carl Stein is the youngest child of the testator, and was born on November 15, 1891 and had not attained the age of twenty-one years on July 1, 1902, and the trust created by the said will as construed by the said decree did not terminate in whole or in part on or before said July 1, 1902.

VII.

Between the date of the said testator's death, April 6, 1900, and July 1, 1902, and before the rendition of said judgment and decree by the said Supreme Court, the executors or trustees under the said will paid out of the trust fund to or for the account of the said children of said testator the following amounts:

To Mrs. Josephine Stein, guardian, for the maintenance and support of the four minor children	$14,674.55
To Mrs. Josephine Stein, guardian, for Josephine Stein, minor child	5,000.00

To Mrs. Josephine Stein, guardian, for Paula Stein, minor child	5,000.00
To Mrs. Josephine Stein, guardian, for Ella Stein, minor child	5,000.00
To Mrs. Josephine Stein, guardian, for Carl Stein, minor child	5,000.00
To Charlotte Trubenbach	5,000.00
To Elizabeth J. Heuel	5,000.00
To Wilhelmina Schneider	5,000.00
	$49,674.55

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VIII.

Section 29 of the act of Congress of June 13, 1898, entitled "An Act to provide ways and means to meet war expenditures, and for other purposes" (30 Stats., 448), so far as material to this case is as follows:

"SEC. 29. That any person or persons having in charge or trust as administrators, executors or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of ten thousand dollars in actual value, passing, after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein transferred by deed, grant, bargain, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be and hereby are, made subject to a duty or tax, to be paid to the United States as follows—that is to say:

"Where the whole amount of said personal property shall exceed in value ten thousand and shall not exceed in value the sum of twenty-five thousand dollars the tax shall be:

"First, Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother, or sister to the person who died possessed of such property, as aforesaid, at the rate of seventy-five cents for each and every hundred dollars of the clear value of such interest in such property.

* * * * * * *

"and where the amount or value of said property shall exceed the sum of one hundred thousand dollars, but shall not exceed the sum of five hundred thousand dollars, such rates of duty shall be multiplied by two;"

By an act approved March 2, 1901, 31 Stats., 948, Section 30 of the Act of June 13, 1898, was amended to read as follows:

"SEC. 30. That the tax or duty aforesaid shall be due and payable in one year after the death of the testator and shall be a lien and charge upon the property of every person who may die as aforesaid for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States; and every executor, administrator, or trustee having in charge or trust any legacy or

distributive share, as aforesaid, shall give notice thereof, in writing, to the Collector or Deputy Collector of the District where the deceased grantor or bargainer last resided within thirty days after he shall have taken charge of such trust, and every executor, administrator, or trustee, before payment and distribution to the legatees, or any parties entitled to beneficial interest therein, shall pay to the collector or deputy collector of the district of which the deceased person was a resident, or in which the property was located in case of non-residents, the amount of the duty or tax assessed upon such legacy or distributive share. * * * and upon such payment and delivery of such schedule, list, or statement said collector or deputy collector shall grant to such person paying such duty or tax a receipt or receipts for the same in duplicate, which shall be prepared as hereinafter provided. Such receipt or receipts, duly signed and delivered by such collector or deputy collector, shall be sufficient evidence to entitle such executor, administrator, or trustee to be credited and allowed such payment by every tribunal which, by the laws of any State or Territory, is, or may be, empowered to decide upon and settle the accounts of executors and administrators. * * * And provided further, That in case of willful neglect, refusal, or false statement by such executor, administrator, or trustee, as aforesaid, he shall be liable to a penalty of not exceeding one thousand dollars, to be recovered with costs of suit. Any tax paid under the provisions of sections twenty-nine and thirty shall be deducted from the particular legacy or distributive share on account of which the same is charged."

On April 12, 1902, said section 29 of the Act of June 13, 1898, was repealed to take effect July 1, 1902, 32 Stats., 97.

On June 27, 1902, an act was approved entitled "An Act to provide for refunding taxes paid upon legacies and bequests for uses of a religious, charitable, or educational character, for the encouragement of art, and so forth, under the Act of June thirteenth, eighteen hundred and ninety-eight, and for other purposes." (32 Stat., 406) of which section 3 is material in this case and reads as follows:

"That in all cases where an executor, administrator, or trustee shall have paid, or shall hereafter pay, any tax upon any legacy or distributive share of personal property under the provisions of the act approved June thirteenth, eighteen hundred and ninety-eight, entitled 'An Act to provide ways and means to meet war expenditures, and for other purposes,' and amendments thereof, the Secretary of the Treasury be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, upon proper application being made to the Commissioner of Internal Revenue, under such rules and regulations as may be prescribed, so much of said tax as may have been collected on contingent beneficial interests which shall not have become vested prior to July first, nineteen hundred and two. And no tax shall hereafter be assessed or imposed under said Act approved June thirteenth, eighteen hundred and ninety-eight, upon or in respect of any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to said July first, nineteen hundred and two."

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IX.

After the death of the said testator, in accordance with the aforesaid act of June 13, 1898, and amendments, the executors of the said estate made return to the Collector of Internal Revenue for the Third District of New York, showing a list of legacies and bequests passing under the last will and testament of the said Conrad Stein. That thereafter said Collector reported said legacies and bequests for assessment, and claimed, demanded, and collected, and the executors to him paid, the sum of $20,448.94, the same being the amount alleged by the said Collector to be due and payable in accordance with the said legacy tax law of June 13, 1898, and amendments on account of legacies arising from personal property bequeathed by the said testator by his said will. That, in the ordinary course of the business of his office, the said Collector paid the said sum, collected as aforesaid, into the Treasury of the United States, and that it is now retained in said Treasury. That the said assessment was as follows:

On the interest of—	Amount alleged taxable.	Rate for every $100	Amount of alleged tax.
Conrad Stein	$110,064.01	$1.50	$1,650.96
Alexander Stein	110,064.01	1.50	1,650.96
Charlotte Trubenbach	163,151.42	1.50	2,447.26
Wilhelmina Schneider	163,151.42	1.50	2,447.26
Elizabeth Heuel	163,151.42	1.50	2,447.26
Josephine Stein	163,151.42	1.50	2,447.26
Paula Stein	163,151.42	1.50	2,447.26
Ella Stein	163,151.42	1.50	2,447.26
Carl Stein	163,151.42	1.50	2,447.26
Total			$20,448.94

X.

On or about March 5, 1909 claimant Henry A. Uterhart filed claim with the Commissioner of Internal Revenue, based on the said Act of June 27, 1902, claiming the refund of $20,448.94, the total amount of tax paid. On July 13, 1911, said claim was rejected by the Sec. of the Treasury and, upon claimants' petition, was reviewed by the said Secretary of the Treasury and the prior rejection was confirmed October 9, 1911.

XI.

There was collected on each legacy of the residuary legatees under the said will, a tax of $2,447.26, aggregating the sum of $17,130.82.

47 If the tax had been assessed on the present worth of such legacies, as estates for years, it would have amounted to $5,467.51.

If the tax had been assessed on the advances made to Josephine Stein, Sr., as guardian, by the trustees prior to July 1, 1902, for the

benefit of said residuary legatees, it would have amounted to the sum of $745.12.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimants are not entitled to recover, and their petition is therefore dismissed, the court being of the opinion that the estate bequeathed by the will to the said heirs and legatees was a vested estate and not a contingent beneficial interest. Vanderbilt v. Eidman, 196 U. S. 480; United States v. Fidelity Trust Company, 222 U. S. 156.

48 V. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the 17th day of June 1914, judgment was ordered to be entered as follows:

The Court, on due consideration of the premises find for the defendants and do order, adjudge and decree that the petition of the claimants, Henry A. Uterhart, and Emil Heuel, as Trustees under the last will and testament of Conrad Stein, deceased, be and the same is hereby dismissed.

49 VI. *Application for and Allowance of Appeal.*

From the judgment rendered in the above-entitled cause on the 17th day of June, 1914, in favor of the defendant, the claimants, by their attorney on the 29th day of June, 1914, make application for, and give notice of, an appeal to the Supreme Court of — United States.

NEWCOMB & FREY,
MORRIS F. FREY,
Att'ys for Claimants.

Filed July 1, 1914.

Ordered: That the above appeal be allowed as prayed for.

EDWARD K. CAMPBELL,
Chief Justice.

July 3, 1914.

50 Court of Claims.

No. 31272.

HENRY A. UTERHART and EMIL HEUEL, as Trustees under the Last Will and Testament of Conrad Stein, Deceased,

vs.

THE UNITED STATES.

I, John Randolph, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-en-

titled cause; of the findings of fact and conclusion of law filed by the Court; of the judgment of the Court; of the application of the claimants for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims at Washington City this 14" day of July, A. D., 1914.

[Seal Court of Claims.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 24,326. Court of Claims. Term No. 214. Henry A. Uterhart and Emil Heuel, as trustees under the last will and testament of Conrad Stein, deceased, appellants, vs. The United States. Filed July 30, 1914. File No. 24,326.